

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-06-077

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ENCOMPASS
INSURANCE COMPANY OF AMERICA,**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Encompass Insurance Company of America (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated July 7, 2005 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on July 7, 2005, the Division completed a market conduct examination of the Respondent. The period of examination was July 1, 2003 to December 31, 2004.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, any and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure, in some cases, to provide all surcharge notices requested in order to facilitate the review of surcharged policies. The Respondent shall provide evidence demonstrating that it has reviewed its procedure for record maintenance and implemented the necessary changes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Delay in submitting the 2004 annual certification of forms to the Division of Insurance. The Respondent shall provide evidence demonstrating that it has reviewed its procedure for filing the annual certifications and implemented the necessary changes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue C concerns the following violation: Failure, in some cases, to handle private passenger automobile claims properly. The Respondent shall provide evidence demonstrating that it has reviewed its claims handling practices and implemented necessary procedural changes to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

12. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of two thousand five hundred and 00/100 dollars (\$2,500.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
13. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits with the Division executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.
14. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with the Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
15. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
16. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the Report dated July 7, 2005, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 7th day of November, 2005.

A handwritten signature in black ink, appearing to read 'Dc7A' or similar, with a stylized flourish at the end.

David F. Rivera
Commissioner of Insurance

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 7th day of November, 2005, I caused to be deposited the **FINAL AGENCY ORDER No. O-06-077 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ENCOMPASS INSURANCE COMPANY OF AMERICA**, in the United States mail via certified mailing with proper postage affixed and addressed to:

Mr. Stephen W. Lilienthal, President
Encompass Insurance Company of America
333 South Wabash Ave.
Chicago, IL 60604

Nancy Kommessar, Market Conduct Exam Manager
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Division of Insurance